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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,289	10/21/2003	Sheila Shaw	SS-101.P.1	4575
24232	7590 09/28/2005		EXAMINER	
DAVID R PRESTON & ASSOCIATES APC			HAYES, MICHAEL J	
12625 HIGH SUITE 205	12625 HIGH BLUFF DRIVE SUITE 205 SAN DIEGO, CA 92130		ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



	Application No.	Applicant(s)				
Office Action Summany	10/690,289	SHAW, SHEILA				
Office Action Summary	Examiner	Art Unit				
	Michael J. Hayes	3763				
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 6(a). In no event, however, may a reply be timil apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed on 12 Se	eptember 2005.					
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closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims		,				
4)⊠ Claim(s) <u>1-10 and 12</u> is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5)⊠ Claim(s) <u>10 and 12</u> is/are allowed.						
6)⊠ Claim(s) <u>1-9</u> is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction and/or	election requirement.					
Application Papers						
9) The specification is objected to by the Examiner.						
10)⊠ The drawing(s) filed on <u>21 October 2003</u> is/are: a)⊠ accepted or b)□ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119	•					
12) ☐ Acknowledgment is made of a claim for foreign	priority under 35 H.S.C. & 119(a)	h-(d) or (f)				
a) ☐ All b) ☐ Some * c) ☐ None of:	priority under 33 0.3.0. § 119(a)	(-(u) 01 (l).				
,_ ,_ ,_	s have been received					
 Certified copies of the priority documents have been received. Certified copies of the priority documents have been received in Application No 						
3. ☐ Copies of the certified copies of the prior	, ,					
application from the International Bureau	•					
* See the attached detailed Office action for a list of the certified copies not received.						
COUNTY AND ACTION OF THE SECTION OF THE SECTION SEPTEMENT OF THE SECTION OF THE S						
Attachment(s)	_					
) ☑ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date						
Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) 5) Notice of Informal Patent Application (PTO-152)						
Paper No(s)/Mail Date	6) Other:					
						

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/12/05 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 6, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by LEONE (US Patent No. 5,141,141). Leone discloses a security band having an endless band made of elastic material and a pocket of inelastic material attached to the inner surface of the elastic band. The band is capable of accepting a peritoneal dialysis catheter because of its pocket. See figs. 1, 4, 6, 7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over LEONE. Leone discloses the claimed invention except for making the elastic of spandex or a width of 3-6 inches. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Leone to using spandex and a width of 3-6 because such modifications are a design choice. Applicant has not established that such material and width is for any particular purpose or solves a stated problem and it appears that other materials and widths would also work equally as well. Applicant has not established any criticality in using spandex or a width of 3-6 inches. Spandex is a well-known elastic material used to make garments.

Claims 1, 2, 3, 4, 5, 6, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUTHERLAND (US Patent No. 6,126,639) in view of LEONE. Sutherland discloses a peritoneal catheter security band made from elastic and inelastic material, having a pocket positioned along an inside surface. (figs. 1, 2) Sutherland does not disclose making the elastic band endless. Leone teaches making an endless elastic band to secure a belt around a body portion. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Leone in the band of Sutherland to secure the band around a body portion. Both references are concerned with attaching an elastic band around a portion of a body.

Allowable Subject Matter

Claims 10 and 12 are allowed.

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Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-9, and 16 of copending Application No. 10/894135. Although the conflicting claims are not identical, they are not patentably distinct from each other because they each recite an elastic band having a pocket for holding a catheter.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (571) 272-4959. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi, can be contacted at (571) 272-4977. The fax number for submitting official papers is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh

23 September 2005

MICHAEL J. HAYES
PRIMARY EXAMINER